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11 VOLKSWAGEN GROUP OF AMERICA, INC.,
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12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**

14 BRIAN GILLARD, MIKE MADANI,
15 SHANT BAKALIAN, ERIC WALLEY,
16 and RICHARD DEVICO, on behalf
themselves and all others similarly situated,

17 Plaintiffs,

18 vs.

19 VOLKSWAGEN GROUP OF AMERICA,
20 INC., VOLKSWAGEN AG, and AUDI AG

21 Defendants.

Case No. 4:17-cv-07287-HSG

**AUDI AG'S AND VOLKSWAGEN AG'S
NOTICE OF JOINDER AND JOINDER IN
DEFENDANT VOLKSWAGEN GROUP OF
AMERICA, INC.'S MOTION TO DISMISS
COMPLAINT; MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT**

Date: June 14, 2018

Time: 2:00 p.m.

Courtroom: 2

Judge: Haywood S. Gilliam, Jr.

NOTICE OF JOINDER AND JOINDER

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Defendants Audi AG (“Audi AG”) and Volkswagen AG (“VWAG”) (collectively, “Defendants”) join in the motion of Defendant Volkswagen Group of America, Inc. (“VWGoA”) to dismiss Plaintiffs’ Class Action Complaint pursuant to Rules 12(b)(1), 12(b)(6), and 9(b) of the Federal Rules of Civil Procedure, Dkt. Nos. 45 and 46, filed with this Court on April 2, 2018 and noticed for hearing on June 14, 2018, at 2:00 p.m. in Courtroom 2 of this Court, located at 1301 Clay Street, Oakland California, 94162.

Each of the points and arguments presented in VWGoA’s Motion to Dismiss (“MTD”) applies to Audi AG and VWAG. For the sake of judicial economy, Audi AG and VWAG respectfully adopt and incorporate by reference all of the grounds, arguments, submissions and exhibits filed in support of VWGoA’s MTD (Dkt. Nos. 45 and 46), as if independently filed herein. Audi AG and VWAG respectfully request dismissal of Plaintiffs’ Class Action Complaint for the same reasons, and for the additional reason discussed below.

I. ARGUMENT

A. The Breach Of Express Warranty Claim Must Be Dismissed Against Audi AG And VWAG For The Additional Reason That Neither Defendant Issued The Warranty

As discussed in VWGoA’s MTD, Plaintiffs’ breach of express warranty claim is premised upon the 4-year/50,000 mile New Vehicle Limited Warranties (“NVLW”) applicable to their vehicles. Compl. ¶ 103. Plaintiffs’ Complaint does not specifically allege that Audi AG or VWAG issued the NVLWs. Instead, in derogation of Rule 8, the Complaint lumps together all of the Defendants under the title “Audi,” and alleges that “Audi provided all purchasers and lessees of the Class Vehicles with a New Vehicle Limited Warranty.” Compl. ¶ 103; *see Magney v. Cty. of Humboldt*, 2018 WL 1156817, at *4 n.7 (N.D. Cal. Mar. 5, 2018) (Gilliam, J.) (a “complaint must not lump ‘the Defendants’ together”; rather, a “complaint must allege what *each* Defendant did with enough specificity to enable the Court to determine whether a claim has been stated against each Defendant individually”); *Inman v. Anderson*, 2018 WL 1071158, at *7 (N.D. Cal.

Feb. 27, 2018) (“a complaint that ‘lump[s] together...multiple defendants in one broad allegations fails to satisfy [the] notice requirement of Rule 8(a)(2)’”).

VWGoA is the Defendant that issued the NVLWs upon which Plaintiffs’ express warranty claim is based. *See* Blake Decl. submitted in support of VWGoA’s MTD, Exhs. B-D, p. 9, Dkt. No. 45-1 (“Audi of America, Inc., an operating unit of Volkswagen Group of America, Inc. (“Audi”) issues” the New Vehicle Limited Warranty). Neither Audi AG nor VWAG issued the NVLWs for Plaintiffs’ vehicles. Accordingly, no claim lies against them for breach of express warranty. *See Wicks v. Chrysler Grp., LLC*, 2011 WL 3876179, *2 (E.D. Cal. Sep. 1, 2011) (dismissing express warranty claim because “warranty was provided by Chrysler LLC...not defendant”); *Comley v. Giant Inland Empire RV Ctr., Inc.*, 2014 WL 12470016, *4 (C.D. Cal. May 13, 2014) (holding that plaintiffs cannot state an express warranty claim against defendant Giant RV because “[a]s Giant RV points out, it did not provide Plaintiffs with an express warranty”).

II. CONCLUSION

For the reasons set forth in VWGoA’s MTD (Dkt. Nos. 45 and 46), joined by Audi AG and VWAG herein, and for the further reason set forth above, Audi AG and VWAG respectfully request that Plaintiffs’ Class Action Complaint be dismissed against it pursuant to Rules 12(b)(1), 12(b)(6) and 9(b); together with such other and further relief as the Court deems just and proper.

Dated: April 19, 2018

Respectfully submitted,

HERZFELD & RUBIN, P.C.

By: /s/ Michael B. Gallub
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Attorneys for Defendants
AUDI AG and VOLKSWAGEN AG